

3. PUB MT, L.L.C. is a limited liability company formed in Texas. Defendant may be served through its registered agent, BURLESON & CRAIG, P.L.L.C. at 1533 W. Alabama, Suite 100 Houston, TX 77006.

III. MISNOMER/ALTER EGO

4. In the event any parties are misnamed or are not included herein, it is Plaintiff's contention that such was a "misidentification", "misnomer" and/or such parties are/were "alter egos" of parties named herein. Alternatively, Plaintiff contends that such "corporate veils" should be pierced to hold such parties properly included in the interest of justice.

IV. REQUEST PURSUANT TO RULE 28

5. To the extent that Defendant is conducting business pursuant to a trade name or assumed name, then suit is brought against Defendant pursuant to the terms of Rule 28 of the Texas Rules of Civil Procedure, and Plaintiff demands that, upon answer to this petition, that Defendant answer in its correct legal and assumed name.

V. JURISDICTION AND VENUE

6. The amount in controversy is within the jurisdictional limits of this Court.

7. This Court has personal jurisdiction over Defendant as it is a Texas L.L.C., or maintains sufficient minimum contacts within the State of Texas. Furthermore, the incident which caused the injury to Plaintiff arose from Defendant's activities in Texas.

8. Venue is proper in Harris County, Texas in that all or a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas. Thus, venue is proper. *See* TEX. CIV. PRAC. & REM. CODE § 15.002.

VI. FACTS

9. On or about the night of September 7, 2016, Plaintiff was working at Defendant's bar. At the end of her shift, Plaintiff was approached by the Fidan Baca ("Scumbag #1"), the managing partner and store owner, and a bartender named Sean Kerrigan ("Scumbag #2"). They

bought Plaintiff some drinks and then suggested that they all go out to a club. They left Defendant's bar together and shared an Uber. All three occupied the back seat.

Scumbag #1



Scumbag #2



10. While on their way to the club, Scumbag #1 started kissing Plaintiff. Plaintiff resisted. Scumbag #2 also started to kiss Plaintiff. Plaintiff resisted. Scumbag #1 then raised Plaintiff's shirt and fondled and kissed her breast. Plaintiff resisted. Scumbag #2 also began fondling and kissing her breast. Plaintiff resisted. Scumbag #1 then proceeded to remove his

small penis from his pants and forced Plaintiff to perform oral sex. Plaintiff resisted. Scumbag #2 also proceeded to remove his even smaller penis from his pants and forced Plaintiff to perform oral sex. Plaintiff resisted. Scumbag #1 then put his fingers in Plaintiff's vagina. Plaintiff resisted. Scumbag #2 also put his fingers in Plaintiff's vagina. Plaintiff resisted.

11. Once the parties arrived at the club, Plaintiff quickly dressed herself. She told the scumbags to go inside and she would follow. She immediately called for an Uber and left. Plaintiff has lived in shame and fear for over three years.

12. In July 2018, Scumbag #2 was indicted for felony aggravated sexual assault of Plaintiff. On the same day, Scumbag #2 was indicted for felony sexual assault of another female for an unrelated sexual assault. Charges were levied against Scumbag #1, but he was not arrested because he could not be found.

13. It is believed that Scumbags #1 and #2 perpetrated this act or similar acts on many occasions with many different young and vulnerable women. The plan was to get waitresses and/or other young women to have drinks with them after hours or near closing. The women were then either attacked at the bar or taken elsewhere.

14. Scumbag #2 committed suicide after his indictment. Unfortunately, Scumbag #1 fled the country and has escaped prosecution to-date.

15. Defendant had an opportunity to prevent the rape in question. Defendant knew of prior bad acts of Scumbag #1 and Scumbag #2. Further, Defendant had a duty to hire personnel safe to workers and patrons. Moreover, Defendant had a duty to supervise its employees. Lastly, Defendant had a duty to provide a safe environment for workers and patrons. Defendant utterly failed.

16. Defendant knowingly, recklessly or negligently created a haven for two perpetrators to rape countless women, including Plaintiff. As such, Defendant is actually more culpable than the involved rapist because had it simply remove Scumbag #1 and Scumbag #2 from the establishment none of these particular women would have been raped.

VII. CAUSES OF ACTION

A. Negligence

17. Plaintiff re-alleges each and every allegation set forth above.

18. The occurrence made the basis of this suit, reflected in the above paragraph, and the resulting injuries and damages of Plaintiff were proximately caused by the negligent conduct of Defendant. Defendant operated the bar in a negligent manner. It violated the duty to exercise ordinary care in the performance of its activities in one or more of the following respects.

19. First, Defendant owed Plaintiff a duty of ordinary care to prevent Scumbag #1 and Scumbag #2 from leaving the premises with Plaintiff in violation of Defendant's own written policies. Second, Defendant violated its duty of care by hiring, employing, supervising, managing and retaining Scumbag #1 and Scumbag #2. As set forth herein, Defendant breached these duties. Defendant's breaches of these duties proximately caused the incident at issue and for Plaintiff to suffer damages as described below.

20. Further, Plaintiff's personal injuries arise as a result of conduct that violates:

- TABC;
- Section 22.011(a)(1), Penal Code (sexual assault); and
- Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

21. In addition to actual damages, Plaintiff seeks punitive damages.

B. Negligent Supervision of Activity

22. Plaintiff re-alleges each and every allegation set forth above.

23. Defendant undertook to perform services that it knew or should have known were necessary for Plaintiff's protection. Defendant failed to exercise reasonable care in performing those services, and Defendant's performance increased Plaintiff's risk of harm. Specifically, Defendant undertook the responsibility to hire and manage employees that were properly trained. Defendant was also responsible for ensuring that its employees and management did not overserve patrons and/or employees in violation of the TABC. Moreover, Defendant took on the responsibility to supervise its employees and management from committing assault upon others. Finally, Defendant undertook the responsibility to prevent patrons and/or from leaving the premises highly intoxicated.

24. Defendant benefited from its employees serving alcohol. By operating a business that serves alcoholic beverages, Defendant undertook to control its employee's activities and impose safety policies and procedures on its employees. However, Defendant failed to monitor safety policies and procedures. Such lead to the injuries in this matter.

25. Defendant's acts and omissions, singularly or in combination with others, constitute negligence, proximately causing Plaintiff's injuries. As a result of Defendant's negligence, Plaintiff has suffered damages as described below.

26. Further, Plaintiff's personal injuries arise as a result of conduct that violates:

- TABC;
- Section 22.011(a)(1), Penal Code (sexual assault); and
- Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

27. In addition to actual damages, Plaintiff seeks punitive damages.

C. Negligence *Per Se*

28. Plaintiff re-allege each and every allegation set forth above.

29. At the time of the incident in question, Defendant sold and/or served alcoholic beverages to Plaintiff after it had become apparent to Defendant that Plaintiff was obviously intoxicated to the extent that she was in clear danger. Such action was in violation of Sections 2.02 and 2.03 of the TABC. Defendant's breaches of these duties proximately caused the incident at issue and for Plaintiff to suffer damages as described below. Defendant also directly contributed to the rape and assault of Plaintiff.

30. Further, Plaintiff's personal injuries arise as a result of conduct that violates:

- TABC;
- Section 22.011(a)(1), Penal Code (sexual assault); and
- Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

31. In addition to actual damages, Plaintiff seeks punitive damages.

D. Dram Shop

32. Plaintiff re-alleges each and every allegation set forth above.

33. Defendant and its agents, servants, employees, security personnel and management violated the Dram Shop Act, TABC §2.02. et seq. Defendant was negligent under the act as a provider. Defendant served and sold alcoholic beverages to a person who was obviously intoxicated to the extent they presented a clear danger to themselves and others. This conduct contributed to Plaintiff's state of intoxication and was a proximate cause of her injuries. Plaintiff suffered harm. Plaintiff is entitled to damages.

34. Plaintiff's personal injuries arise as a result of conduct that violates:

- TABC;
- Section 22.011(a)(1), Penal Code (sexual assault); and

- Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

35. Plaintiff does not seek punitive damages for this claim only.

E. Premises Liability

36. Plaintiff re-allege each and every allegation set forth above.

37. Plaintiff was an invitee at Defendant's bar at the time the events and injuries.

The danger in question was not open and obvious. Defendant knew or should have known of the danger. Defendant did not timely remedy the danger. Plaintiff was injured. Plaintiff suffered harm. Plaintiff is entitled to damages.

38. Further, Plaintiff's personal injuries arise as a result of conduct that violates:

- TABC;
- Section 22.011(a)(1), Penal Code (sexual assault); and
- Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

39. In addition to actual damages, Plaintiff seeks punitive damages.

D. Gross Negligence (All but § D)

40. Plaintiff re-alleges each and every allegation set forth above.

41. Defendant's conduct constitutes gross negligence under Texas law and Plaintiff seeks exemplary damages as allowed by Texas law against Defendant. Specifically, Defendant's conduct, when viewed objectively from Defendant's standpoint at the time it occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendant's negligent, reckless, or intentional conduct was more than momentary thoughtlessness or inadvertence. Furthermore, Defendant had actual, subjective awareness of the risk(s) but proceeded with a conscious indifference to the rights, safety, or welfare of others.

42. Plaintiff's personal injuries arise as a result of conduct that violates:

- TABC;
- Section 22.011(a)(1), Penal Code (sexual assault); and
- Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault).

43. In addition to actual damages, Plaintiff seeks punitive damages.

H. Vicarious and Derivative Liability

44. Plaintiff re-allege each and every allegation set forth above.

45. Defendant is liable under the theory of *respondeat superior* in that Defendant's employees and/or bartenders were acting within the course and scope of their employment with Defendant at the time the incident occurred. Scumbag #1 and Scumbag #2 were Plaintiff's direct supervisors. Defendant is legally responsible to Plaintiff for the negligent conduct of its vice-principals, and for the negligent conduct of Defendant's other respective employees, agents, servants and representatives under the legal doctrines of *respondeat superior*, agency and/or ostensible agency because Defendant's vice principals and Defendant's employees were at all times material hereto agents, ostensible agents, servants and/or employees of Defendant, and were acting within the course and scope of their respective agency, servitude or employment. As a result, thereof, Defendant is vicariously liable for all negligence, negligence *per se*, and gross negligence of its vice-principals and Defendant's other employees, agents, servants and representatives.

46. Pleading further, and in the alternative, and without waiving the foregoing, Plaintiff would also show that, at all relevant times, Defendant's vice-principals were engaged in the performance of non-delegable duties of the businesses of each Defendant. Further, Defendant authorized or ratified the conduct of its vice principals.

47. In light of the above, Defendant is liable to Plaintiff for damages under the doctrine of *respondeat superior*, traditional principles of agency law, “vice principal” liability, and any other applicable theory of law. Defendant is responsible for the acts and/or omissions of Defendant’s employees and/or bartenders, which whether taken singularly or in any combination, constitute premises liability, Dram Shop liability, negligence and negligence *per se* and gross negligence, which proximately caused the collision and injuries and other losses as specifically set forth herein.

VIII. CONDITIONS PRECEDENT

48. All conditions precedent to Plaintiff’s right to recover and to Defendant’s liability have been performed or have occurred.

IX. PUNITIVE DAMAGES (ALL BUT § D)

49. Plaintiff re-alleges each and every allegation set forth above.

50. The damages alleged herein resulted directly from Defendant’s gross negligence and malice. *See* TEX. CIV. PRAC. & REM. CODE § 41.003(a). Furthermore, Defendant is liable for the damages attributed to their vice principals because they have authority over the nondelegable responsibilities of Defendant. Any caps on punitive damages, under state or federal law, should not be applied because Defendant’s conduct disqualifies it from any caps on exemplary damages. Specifically, Defendant’s actions constitute a state law felony. *See id.* at § 41.008(c)(15).

X. REQUEST FOR DISCLOSURE

51. Pursuant to Rule 194, Defendant is requested to disclose within fifty (50) days of service of this request, the information or material described in Rule 194.2.

XI. JURY DEMAND

52. Plaintiff demands a trial by jury.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendant be cited to appear and answer herein, and that upon final trial of this case, Defendant be held liable for Plaintiff's damages in excess of \$5,000,000.00 but less than \$10,000,000.00 and that the Court award the following relief:

- actual and exemplary damages;
- conscious physical and mental pain, suffering and anguish;
- Loss of enjoyment of life and peace of mind;
- Loss of earnings capacity;
- Reasonable medical bills including counseling;
- punitive damages;
- pre- and post-judgment interest;
- costs of court; and
- any other relief to which they may be entitled.

Respectfully submitted,

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